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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Neil Rusty Bond,

10 Plaintiff,

11 v.

12 Commissioner of Social Security  
13 Administration,

14 Defendant.

No. CV-19-04933-PHX-JAT

**ORDER**

15 Pending before the Court is the Motion for Remand filed by Defendant  
16 Commissioner of Social Security Administration (“Commissioner”). (Doc. 42). After  
17 finding that Plaintiff Neil Rusty Bond asserts a colorable due process claim in the Amended  
18 Complaint (Doc. 9), the Court denied the Commissioner’s motion to dismiss for lack of  
19 subject matter jurisdiction (Doc. 24). (Doc. 41). Further, because the Social Security  
20 Administration recognized that it never reconsidered the initial determination as to  
21 Plaintiff’s overpayment amount despite Plaintiff’s alleged request for reconsideration,  
22 (Doc. 36-1), the Court sought supplemental briefing as to whether a sentence six remand  
23 under 42 U.S.C. § 405(g) was appropriate. (Doc. 41 at 14–15).

24 In response to the Court’s order (Doc. 41), the Commissioner asks the Court to  
25 remand the case pursuant to sentence six and “issue an order directing the agency to modify  
26 the amount of Plaintiff’s overpayment to be consistent with the amount of amended  
27 restitution that he was ordered to pay in his criminal case, \$30,929.16.” (Doc. 42 at 1–2).

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1 But, the Commissioner also requests that the Court enter judgment in favor of Plaintiff. (*Id.*  
2 at 2). Plaintiff agrees that remand and repayment are necessary.<sup>1</sup> (Doc. 43 at 9–10).

3 The Court will grant the Motion (Doc. 42) in part. The Motion (Doc. 42) will be  
4 granted as to the Commissioner’s request for judgment in favor of Plaintiff, and the Court  
5 will order the Administration to modify Plaintiff’s overpayment amount to \$30,929.16.  
6 (Doc. 42 at 1–2). However, because the Commissioner requests judgment in favor of  
7 Plaintiff, remand will be under sentence four of 42 U.S.C. § 405(g), not sentence six. *See*  
8 *Shalala v. Schaefer*, 509 U.S. 292, 297 (1993). Accordingly, the Court will deny the request  
9 to remand pursuant to sentence six, and instead remand under sentence four of 42 U.S.C.  
10 § 405(g).

11 Based on the foregoing,

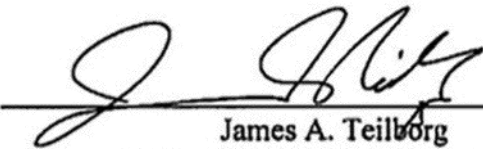
12 **IT IS ORDERED** that the Commissioner’s Motion for Remand Pursuant to  
13 Sentence Six of 42 U.S.C. § 405(g) (Doc. 42) is **GRANTED IN PART** and **DENIED IN**  
14 **PART** as articulated above.

15 **IT IS FURTHER ORDERED** that judgment shall be entered in favor of Plaintiff  
16 and that this matter shall be **REMANDED** to Defendant Commissioner of Social Security

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22 <sup>1</sup> Plaintiff requests that the Court “remand this matter to the ALJ to revise the amount of  
23 overpayment to \$20,622.78” as he claims he only received \$20,622.78 in overpayments  
24 while his ex-wife received overpayments totaling \$10,306.38 for Plaintiff’s daughter.  
25 (Doc. 43 at 6, 9–10). Because Plaintiff alternatively asks that the Court remand for payment  
26 of any amount in excess of \$30,929.16, (Doc. 43 at 10), just as the Commissioner requests,  
27 (Doc. 42 at 1–2), the Court will not consider Plaintiff’s request to revise the amount of  
28 overpayment to any other amount. Indeed, the Court cannot consider such a request as it  
asks the Court to make factual findings that have not yet been reviewed by the  
Administration—the body that Congress entrusted with the responsibility of calculating  
overpayment amounts in the first instance. 42 U.S.C. § 404(a); *see I.N.S. v. Ventura*, 537  
U.S. 12, 16 (2002); *Treichler v. Comm’r of Soc. Sec.*, 775 F.3d 1090, 1098 (9th Cir. 2014).  
The Administration may have erred, but that error does not give the Court the right to run  
roughshod over the congressional scheme.

1 Administration to modify the amount of Plaintiff's overpayment to \$30,929.16. The Clerk  
2 of Court shall enter judgment accordingly.<sup>2</sup>

3 Dated this 19th day of June, 2020.

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James A. Teilborg  
Senior United States District Judge

<sup>2</sup> To the extent mandate is required, the judgment shall serve as the mandate.